IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF IDAHO

IN RE)
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GEBERT, ROBERT G. and) Case No. 99-01217
GEBERT, EILEEN K.,)
)	
)	
Debtors.)	MEMORANDUM AND
)	SUMMARY ORDER
)	
)	

HONORABLE TERRY L. MYERS, U.S. BANKRUPTCY JUDGE

Cyrus J. Roedel, ROEDEL LAW OFFICES, Boise, Idaho, for Debtors.

Bernie R. Rakozy, Chapter 13 Trustee, Boise, Idaho.

Gary L. McClendon, Office of the U.S. Trustee, Boise, Idaho.

BACKGROUND

On May 12, 1999, the above Debtors filed a voluntary chapter 13 petition for relief. On the same day, they filed all their schedules, statement of affairs and their proposed chapter 13 Plan. Also on May 12, Mr. Roedel, the Debtors' counsel, filed a disclosure under § 329(a) and Rule 2016(b)

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indicating that he had been paid \$1,140.00 in fees for representation of the Debtors.

The Debtors' Plan provided for 36 monthly payments of \$693.00, the amount of the Debtors' net disposable income reflected on Schedules I and J.

The Plan submitted was identical to the District's model chapter 13 Plan.

The Plan dealt with no priority claims, no classified unsecured claims, and only one secured creditor. The Plan proposed to pay this creditor, which had a lien on a vehicle, regular monthly payments "outside" the Plan. The Plan dealt with no default cure, no leases, no lien avoidance nor any other issue, either ordinary or extraordinary.

The schedules reflect no real estate owned by these Debtors, no secured claims other than the single vehicle lien addressed by the Plan, and no tax or other priority debt. The Debtors do disclose some \$162,000.00 of unsecured debt, all of which appears to be credit cards or vendor cards.

On June 14, the § 341 meeting of creditors was held. On June 22, the Trustee filed his initial recommendations concerning the Plan, indicating some modest concerns over documentation of certain budget items and greater explanation concerning some exemptions claimed.

¹ The District's form chapter 13 plan regularizes and streamlines practice in the District, and reduces time and expense incurred by Debtors' counsel in the plan formulation and confirmation process. That is certainly no less true in this case than in the more common chapter 13 case.

On August 10, the regularly scheduled confirmation hearing was held. There were no impediments to confirmation other than answering the Trustee's concerns. Mr. Roedel appeared at the hearing and agreed that the Plan payments would be increased by \$50.00 per month which resolved the last of the Trustee's concerns. The Court ordered the Plan confirmed² and also, on the record, required Debtors' counsel to submit an affidavit in support of the attorney's fees paid.

On September 15, 1999 the Court received, from Mr. Roedel, a photocopy of a September 14 letter from Mr. Roedel to his clients which stated:

Dear Robert and Eileen.

Please find enclosed a check to you in the amount of \$145.00. The same represents a partial refund to you for fees paid related to your chapter 13 case.

Accompanying the copy of this letter is a copy of a check to the Debtors from Mr. Roedel in the amount of \$145.00. No pleading accompanied these materials. There was no cover correspondence. No parties were served with copies.

² Though a month has passed since hearing, no order of confirmation has yet been submitted. The record reflects no reason why this should be so. The questions surrounding attorneys' fees have no impact on that order, as the fees were prepaid, and the plan did not propose to make any payments to counsel. The Court will therefore require that an order of confirmation be lodged with the Court within ten days of the date of this decision.

No supplemental or amended Rule 2016(b) declaration has been filed. And finally, and perhaps most importantly, no affidavit in support of the attorney's fees has been filed, as was ordered by the Court at the confirmation hearing.

DISCUSSION

The Court must first observe that matters submitted to the Court related to ongoing cases must be in the form of proper pleading, filed with the Clerk, and served upon parties in interest as may be required by the Rules. Correspondence to the Court is improper. So, too, is copying the Court with correspondence. This is fundamental.

The Court is also constrained to observe that Mr. Roedel did not file the affidavit as instructed by the Court. He has not been relieved of that obligation. Mr. Roedel apparently concluded that a refund of \$145.00 to his clients would reduce his fees from \$1,140.00, as shown on the Rule 2016(b) disclosure, to the amount of \$995.00. Apparently, he believes that, by reducing the fees below \$1,000.00, his services are insulated from review and that he need not comply with the directive of the Court. Both assumptions are in error.

As a matter of practice in this District, the Court does not generally require itemization and proof regarding services rendered in chapter 13 cases if

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the total fees charged in the case are below \$1,000.00. Despite what some debtors' attorneys might believe, this does not mean that there is an automatic entitlement to a \$1,000.00 fee in every chapter 13 case. Nor does it mean that fees, so long as they are below the \$1,000.00 "benchmark," are insulated from review.

Rather, the Court has concluded that, in the majority of chapter 13 cases, the files and records establish a sufficient basis to conclude that services rendered at a total cost of less than \$1,000.00 are justified. This rule of thumb does not limit the Court's ability to make inquiry in any chapter 13 case regarding services rendered and fees charged. Section 329 and Rule 2017 support the ability of the Court to inquire, and adjust compensation, as may be necessary or appropriate in any case.

The decision of Debtors' counsel to refund \$145.00 in fees to his clients does not excuse his failure to comply with the Court's directive to file an affidavit, nor does dropping the fee below \$1,000.00 insulate Debtors' counsel from an inquiry as to the reasonable value of the services he rendered in this case.

Most consumer chapter 13 cases deal with claims secured by real estate, cure of default on mortgages, priority tax claims, multiple secured claims regarding personal property, leases, and several other matters which arise with

regularity under chapter 13. This case is not a typical one. Only one secured claim was treated, and that done through the simple expedient of continuing regular payments outside the Plan. The Plan does nothing more than distribute disposable income over three years on a pro rata basis to a large pool of unsecured creditors.

It is this atypical situation which led the Court to ensure that the affidavit, generally required of counsel when fees are over \$1,000.00, was in fact filed here. The record in this matter justifies asking counsel to defend the reasonableness of the fees charged these Debtors. That counsel elected to refund \$145.00 to his clients does not shield his conduct or his fees from scrutiny. A fee of \$995.00, upon this record, still deserves review.

ORDER

Based upon the foregoing and the entire record on this case, Debtors' counsel is ordered to submit a detailed itemization of all services rendered and fees charged these Debtors within ten days of the date hereof. If he chooses, Debtors' counsel may also submit, in conjunction with this affidavit, written argument in support of the reasonableness of the fees charged. Upon receipt of the same the Court will take under advisement, pursuant to the provisions of § 329(b) and Rule 2017, the question of reasonableness of the fees charged, and issue such further and supplementary order(s) as may be appropriate.

Dated this 16th day of September, 1999.